



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

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GUIDELINES FOR SELECTION OF DESIGNEES
PURSUANT TO
M.G.L. CHAPTER 40T
"PUBLICLY-ASSISTED AFFORDABLE HOUSING"

1. BACKGROUND

On November 24, 2009, the Commonwealth enacted Senate Bill 2190, "An Act Preserving Publicly-Assisted Affordable Housing", creating a new Chapter 40T of the Massachusetts General Laws ("Ch.40T"). A key aspect of Ch.40T is the authority granted to DHCD to make an offer and/or respond to a right of first refusal when the owner of a covered property intends to sell such property. The statute permits DHCD to name a designee to assume the agency's rights and responsibilities in undertaking the purchase and ownership of covered properties pursuant to the processes established under the law ("Designee" or "Designees").

2. PURPOSE

The purpose of these Guidelines is to set out the standards and procedures by which DHCD will select a Designee pursuant to M.G.L. Ch.40T (the Act) and the related regulations found at 760 CMR 64 (the Regulations).

3. PROCUREMENT PROCESS

In order to have a ready pool of potential Designees, DHCD will typically procure a Designee in 2 stages.

A. Prequalification: The first stage, "Prequalification", will establish the general qualifications of interested parties. The prequalification process is conducted through a Request for Responses (RFR) process posted on Comm-PASS (www.comm-pass.com). Within 10 days of submission, DHCD will review any submitted qualifications and will approve, disqualify or request additional information. DHCD is solely responsible for evaluating the qualifications of interested organizations.

Ordering of Prequalified Designees: DHCD will create two ordered lists of prequalified Designees according to the date that DHCD receives a complete RFR response such that the entity that first

submits a complete response to the RFR shall be numbered "1" on the list of prequalified list; the second such response shall be numbered "2", etc. The first list will be for non-geographically constrained organizations ("open organizations"); the second list for geographically constrained organizations ("local organizations"). Potential designees must clearly indicate whether they desire to be considered a local or an open organization. Local organizations must have a service area (or "footprint") for purposes of 40T that is limited to a municipality, a portion of a municipality, or to a group of adjacent municipalities. DHCD will review the service area proposed by the local organization.

In the case where the organization wishes to be considered for designation outside the neighborhoods where it has previously developed or preserved housing, DHCD will review the following criteria: reasons stated by the organization for the proposed expansion, conformity of the expansion with the organization's workplan, representation by the organization's board of directors, and other relationships in the proposed neighborhoods. Following the review, DHCD will communicate with the organization the neighborhoods where the organization will be considered for designation.

B. PROCESS FOR DESIGNEE SELECTION

The second state of the process will occur upon DHCD receiving a Notice of Sale. As time is of the essence in this process, all potential designees except municipalities must be prequalified. To select a designee for a particular project, DHCD will take the following steps:

- 1) Determine if the project falls in the service area of any Local Organizations. Using the site specific selection criteria below DHCD will evaluate any Local Organization(s) to determine if any are qualified to serve as designee for the project.
- 2) Review the ordered list of Statewide Organizations and choose the next organization on the list that meets the site-specific criteria below.
- 3) Confirm that the Statewide Organization and any proposed Local Organization(s) satisfy the site selection Criteria in Section 5 below, and have an interest in serving as Designee.
- 4) Consult with the municipality regarding designee selection. DHCD will immediately designate the affected municipality upon written request, though this designation is not assignable. DHCD will discuss the qualifications of the Statewide Organization and any appropriate Local Organizations(s), and give particular consideration to the preference of a municipality proposing significant funding for the transaction or a municipality that has previously funded or placed a regulatory restriction on the project. Municipal officials must recommend a potential Designee within 5 days after being contacted by DHCD. DHCD is not required to designate the organization preferred by the municipality.
- 5) Taking into consideration feedback from the municipal consultation and an evaluation of the site-specific criteria of both Local and Statewide Organizations, select the designee.

C. Designation for Multiple Properties Simultaneously: Properties being offered for sale as a package by the owner will generally be treated as a single transaction and DHCD will select one Designee for the transaction. DHCD also may opt to treat the simultaneous offer for sale of

multiple properties by a single owner, regardless of whether the properties are offered as a package, as a single transaction. DHCD, with the consent of the owner, may decide to select Designees for individual properties in a portfolio sale if the size or separation of the properties would make a portfolio transaction more difficult to finance.

4. PREQUALIFICATION CRITERIA

In order to be prequalified, organizations must meet the following standards: These standards must be met by the developer, but in some cases the respondents can identify a consultant or contractor who may have specific experience not present in the developer's staff.

- A.** Direct experience within the past 5 years in negotiating for and acquiring existing "publicly assisted housing" as defined in Ch.40T.
- B.** Direct experience within the past 5 years in overseeing and managing the rehabilitation of occupied multi-family housing.
- C.** Demonstrated commitment to preserving affordable housing.
- D.** Expertise in state and federal assisted housing financing programs and successful experience in structuring complex real estate financing transactions.
- E.** Demonstrated capacity to productively engage with tenant organizations and low and moderate income tenants of multi-family housing regarding project development issues.
- F.** Sound financial position and demonstrated ability to attract necessary project debt and equity financing.

5. SITE-SPECIFIC SELECTION CRITERIA

In order to be selected to act as Designee for a particular purchase opportunity, Prequalified Designees must continue to meet all of the Prequalification Criteria above and also meet the following additional criteria at the time of selection:

- A.** Current organizational capacity to exercise the authority and undertake the obligations of Designees pursuant to the Act and the Regulations.
- B.** Ability to provide property management and asset management for the subject property through existing third party relationships or internal capacity.
- C.** That the individual identified with primary oversight of the Scope on behalf of the Designee has experience within the prior 5 years of successfully managing all due diligence aspects of acquiring existing "publicly assisted housing" as defined in Ch.40T, including but not limited to site control, deal structuring, assembling and/or obtaining requisite financing and permits/approvals, and assessing capital needs.
- D.** If deemed by DHCD to be relevant to the subject property, that the assigned individuals have direct experience within the prior 5 years in undertaking successful rehabilitation of occupied multi-family rental properties in Massachusetts.
- E.** In good standing with the U.S. Department of Housing & Urban Development (HUD), DHCD, MassDevelopment, MassHousing, Massachusetts Housing Investment Corporation and Massachusetts Housing Partnership, and CEDAC.

F. Satisfactory history of fair housing compliance. DHCD will consult with Massachusetts Commission against Discrimination, the Office of the Attorney General and its Fair Housing Counsel to determine satisfactory fair housing status.

G. DHCD may also exclude a prequalified organization for any of the following reasons:

- 1) The project is of a type or size that the organization has not previously undertaken;
- 2) The organization is already serving as a Designee for another project;
- 3) DHCD determines, in its sole discretion, based on staffing at the prequalified organization and projects under development, that the organization is not able to devote sufficient resources to proposed project acquisition.

If DHCD excludes an organization for one of the reasons listed above it will not affect the organization's position on the ordered list described in Section 3(A).